Commission Implementing Regulation (EU) 2016/1046 of 28 June 2016 imposing a definitive anti-dumping duty on imports of certain molybdenum wires originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1046

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community[(1)] ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

A. PROCEDURE

1. **Measures in force**

(1) Following an anti-dumping investigation ('the original investigation') in accordance with Article 5 of the basic Regulation, the Council imposed a definitive anti-dumping duty on imports of certain molybdenum wires originating in the People's Republic of China ('the PRC' or 'country concerned'), by Council Implementing Regulation (EU) No 511/2010[(2)] (the 'original measures').

(2) The original measures took the form of an *ad valorem* duty rate of 64,3 %.

(3) In 2012 and 2013, following two anti-circumvention investigations, the original measures were first extended to imports of molybdenum wire consigned from Malaysia[(3)] and, secondly, to imports of molybdenum wire from the PRC containing by weight at least 97 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm[(4)]. On 30 October 2015, following a third anti-circumvention investigation, the measures were extended to molybdenum wire containing by weight at least 97 % of molybdenum, with a maximum cross-sectional dimension that exceeds 4,0 mm but does not exceed 11,0 mm[(5)].

2. **Initiation of an expiry review**

(4) Following the publication of a notice of impending expiry[(6)] of the anti-dumping measures in force, the Commission received a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation.

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(5) The request was lodged by Plansee SE ('the applicant'), the main Union producer of molybdenum wire, representing 90 % of total Union production.

(6) The request was based on the grounds that the expiry of the measures would likely result in recurrence of dumping and recurrence of injury to the Union industry.

(7) On 12 June 2015, the Commission initiated an expiry review pursuant to Article 11(2) of the basic Regulation in order to determine whether the expiry of the measures would be likely to lead to a continuation or recurrence of dumping and injury. It published a notice in the *Official Journal of the European Union*[7] ('Notice of Initiation').

3. **Interested parties**

(8) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the applicant, other known Union producers, exporting producers, importers and users in the Union known to be concerned, and the Chinese authorities of the initiation of the expiry review and invited them to participate.

(9) All interested parties had the opportunity to comment on the initiation of the review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

3.1. *Sampling*

(10) In the Notice of Initiation, the Commission stated that it might sample interested parties, in accordance with Article 17 of the basic Regulation.

(a) Sampling of importers

(11) To decide whether sampling was necessary and, if so, to select a sample, the Commission requested all unrelated importers to provide the information specified in the Notice of Initiation.

(12) No importers came forward to provide the information requested in the Notice of Initiation.

(b) Sampling of exporting producers in the PRC

(13) In view of the apparent large number of exporting producers in the PRC, sampling was envisaged in the Notice of Initiation.

(14) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission requested the Mission of the PRC to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(15) Only one company in the PRC provided a completed sampling form on 29 June 2015. However, the information provided by this company indicated no exports of

the product concerned to the Union as defined in recital (23) below, but only other types of molybdenum wire with a maximum cross-sectional dimension exceeding 4,0 mm. The company was then invited on 25 August 2015 to submit comments or information in the context of the expiry review. However, the company did not provide any reply to that invitation. In addition, the company in question was involved at that stage of the investigation in the anti-circumvention investigation that led to the adoption of Regulation (EU) 2015/1952. Based on all these considerations, the Commission considered that that company should not be part of a sample.

(16) Since no other Chinese exporting producer came forward, sampling was not necessary.

3.2. *Questionnaires and verification visits*

(17) The Commission sought and verified all the information it deemed necessary for the determination of the likelihood of continuation or recurrence of dumping and resulting injury and for the determination of the Union interest.

(18) The Commission sent questionnaires to the two known Union producers. One Union producer (Plansee SE), representing around 90 % of the total sales of the Union industry, provided a questionnaire reply. The other Union producer expressed on 11 May 2015 the wish to remain neutral in the investigation and did not provide a reply to the questionnaire that it received on 12 June 2015.

(19) No questionnaires were sent to Chinese exporting producers since, as explained in recitals (13) to (16), none of them came forward.

(20) The Commission sent questionnaires to the nine users that came forward after initiation and received five replies from the users of the product under review.

(21) One verification visit pursuant article 16 of the basic Regulation was carried out at the premises of the Union producer Plansee SE, Austria.

4. **Review investigation period and period considered**

(22) The investigation of the likelihood of continuation or recurrence of dumping covered the period from 1 April 2014 to 31 March 2015 (the ‘review investigation period’). The examination of the trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2012 to the end of the review investigation period (the ‘period considered’).

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. **Product concerned**

(23) The product concerned is molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China, currently falling within CN code ex 8102 96 00.

2. **Like product**

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(24) The investigation showed that the following products have the same basic physical and chemical characteristics as well as the same basic uses:

— the product concerned;

— the product produced and sold in the Union by the Union industry.

(25) The Commission concluded that these products are like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

1. **Preliminary remarks**

(26) In accordance with Article 11(2) of the basic Regulation, it was examined whether dumping was taking place and whether the expiry of existing measures would be likely to lead to a continuation or recurrence of dumping.

(27) As mentioned above in recital (16), none of the Chinese exporting producers cooperated in the current investigation and therefore use had to be made of facts available in accordance with Article 18 of the basic Regulation.

(28) In this regard, the Chinese authorities were duly informed that consequently to non-cooperation of any Chinese exporting producer, the Commission could apply Article 18 of the basic Regulation concerning the findings with regard to the PRC. No comments were received in this respect.

(29) On this basis, in accordance with Article 18(1) of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping set out below were based on facts available. For this purpose, the request for the expiry review, Eurostat statistics, the data collected by Member States pursuant to Article 14(6) of the basic Regulation (the 'Article 14(6) database') and data collected during the previous cases (see recital (3)) on the same product concerned were used. The Chinese Export Statistics Database was also analysed. However, the analysis showed that its coding structure for the product concerned was not precise enough to provide useable information. Therefore, this source of information could not be used.

2. **Dumping during the review investigation period**

2.1. *Analogue country*

(30) According to Article 2(7)(a) of the basic Regulation, normal value shall be determined on the basis of the price or constructed value in a market economy third country. For this purpose, a market economy third country had to be selected ('the analogue country').

(31) The USA was selected as an analogue country in the original investigation. In the Notice of Initiation of the present investigation, the Commission proposed to use India as analogue country since the producer in the USA stopped producing molybdenum wire since the investigation period of the original investigation. The

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Commission invited parties to make comments on the appropriateness of this choice but none of the parties provided any comments.

(32) The Commission sought information concerning producers of molybdenum wire in other potential analogue countries and contacted India, Japan, Mexico, Ukraine and USA inviting all known producers of molybdenum wire in these countries to provide the necessary information.

(33) None of the companies contacted in these countries agreed to cooperate with the investigation. Moreover, there were no indications for any other countries where production of molybdenum wires might be taking place. Hence, the Commission had to revert to the Union market as the only possible option to determine the normal value, in accordance with Article 2(7)(a) of the basic Regulation.

2.2. *Normal value*

(34) The information relating to the production and sale of the like product on the Union market received from both Union producers was used as a basis for the determination of the normal value applicable to exporting producers in the PRC.

(35) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the total volume of sales of the Union industry of the like product in the Union market was representative during the review investigation period. These sales were considered representative if the total sales volume to independent customers represented at least 5 % of the total Chinese export sales volume of the product concerned to the Union during the review investigation period. On this basis the sales of the like product of the Union industry in the Union market were representative.

(36) The investigation established that the weighted average sales price of the Union industry was profitable during the review investigation period and thus could be regarded as having been made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

(37) Sales of the Union industry on the Union market were profitable during the review investigation period and made in representative quantities. Therefore, normal value was based on the sales price of the like product charged by the Union industry to independent customers in the Union.

2.3. *Export price*

(38) As mentioned above in recital (27), due to the non-cooperation of the Chinese exporting producers, the export price was based on facts available, in accordance with Article 18 of the basic Regulation, i.e. on the 'Article 14(6) database' cross-checked with information provided in the request and Eurostat statistics.

2.4. *Comparison*

(39) The Commission compared the normal value and the export price on an ex-works basis. Given the lack of cooperation from the Chinese exporting producers, the product types exported from the PRC could not be determined. Therefore, a